

SENATE BILL No. 419

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-3; IC 6-3-7-5.

Synopsis: Worker's compensation. Eliminates liability for failure to obtain evidence of worker's compensation coverage from a contractor or subcontractor. Repeals provisions requiring that an independent contractor obtain a certificate of exemption. Excludes executive officers of a corporation with fewer than three executive officers from the definition of "employee" for worker's compensation purposes. Requires the worker's compensation board to define "independent contractor".

Effective: July 1, 2003.

Merritt

January 21, 2003, read first time and referred to Committee on Pensions and Labor.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 419

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-3-2-14, AS AMENDED BY P.L.202-2001,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 14. (a) As used in this section, "person" does not
4 include an owner who contracts for performance of work on the owner's
5 owner occupied residential property.

6 (b) ~~The state; any political division thereof; any municipal~~
7 ~~corporation; any corporation; limited liability company; partnership; or~~
8 ~~person; contracting for the performance of any work exceeding one~~
9 ~~thousand dollars (\$1,000) in value by a contractor subject to the~~
10 ~~compensation provisions of IC 22-3-2 through IC 22-3-6; without~~
11 ~~exactng from such contractor a certificate from the worker's~~
12 ~~compensation board showing that such contractor has complied with~~
13 ~~section 5 of this chapter; IC 22-3-5-1; and IC 22-3-5-2; shall be liable~~
14 ~~to the same extent as the contractor for compensation; physician's fees;~~
15 ~~hospital fees; nurse's charges; and burial expenses on account of the~~
16 ~~injury or death of any employee of such contractor; due to an accident~~
17 ~~arising out of and in the course of the performance of the work covered~~



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by such contract.

(c) Any contractor who shall sublet any contract for the performance of any work, to a subcontractor subject to the compensation provisions of IC 22-3-2 through IC 22-3-6, without obtaining a certificate from the worker's compensation board showing that such subcontractor has complied with section 5 of this chapter, IC 22-3-5-1, and IC 22-3-5-2, shall be liable to the same extent as such subcontractor for the payment of compensation, physician's fees, hospital fees, nurse's charges, and burial expenses on account of the injury or death of any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract.

(d) (b) The state, any political division thereof, any municipal corporation, any corporation, limited liability company, partnership, person, or contractor paying compensation, physician's fees, hospital fees, nurse's charges, or burial expenses under this ~~section~~ **article** may recover the amount paid or to be paid from any person who, independently of such provisions, would have been liable for the payment thereof and may, in addition, recover the litigation expenses and attorney's fees incurred in the action before the worker's compensation board as well as the litigation expenses and attorney's fees incurred in an action to collect the compensation, medical expenses, and burial expenses.

(e) (c) Every claim filed with the worker's compensation board under this section shall be instituted against all parties liable for payment. ~~The worker's compensation board, in an award under subsection (b), shall fix the order in which said parties shall be exhausted, beginning with the immediate employer, and, in an award under subsection (c), shall determine whether the subcontractor has the financial ability to pay the compensation and medical expenses when due and, if not, shall order the contractor to pay the compensation and medical expenses.~~

SECTION 2. IC 22-3-2-14.5, AS AMENDED BY P.L.202-2001, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14.5. (a) As used in this section, "independent contractor" refers to a person described in IC 22-3-6-1(b)(7).

(b) As used in this section, "person" means an individual, a proprietorship, a partnership, a joint venture, a firm, an association, a corporation, or other legal entity.

(c) (b) An independent contractor who does not make an election under IC 22-3-6-1(b)(4) or IC 22-3-6-1(b)(5) is not subject to the compensation provisions of IC 22-3-2 through IC 22-3-6. ~~and must file a statement with the department of state revenue in accordance with~~



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1 IC 6-3-7-5 and obtain a certificate of exemption.

2 (d) Together with the statement required in subsection (c), an
3 independent contractor shall file annually with the department
4 documentation in support of independent contractor status before being
5 granted a certificate of exemption. The independent contractor must
6 obtain clearance from the department of state revenue before issuance
7 of the certificate.

8 (e) An independent contractor shall pay a filing fee in the amount
9 of fifteen dollars (\$15) with the certificate filed under subsection (g).
10 The fees collected under this subsection shall be deposited in the
11 worker's compensation supplemental administrative fund and shall be
12 used for all expenses the board incurs.

13 (f) The worker's compensation board shall maintain a data base
14 consisting of certificates received under this section and on request
15 may verify that a certificate was filed.

16 (g) A certificate of exemption must be filed with the worker's
17 compensation board. The board shall indicate that the certificate has
18 been filed by stamping the certificate with the date of receipt and
19 returning a stamped copy to the person filing the certificate. A
20 certificate becomes effective as of midnight seven (7) business days
21 after the date file stamped by the worker's compensation board. The
22 board shall maintain a data base containing the information required in
23 subsections (d) and (f).

24 (h) A person who contracts for services of another person not
25 covered by IC 22-3-2 through IC 22-3-6 to perform work must secure
26 a copy of a stamped certificate of exemption filed under this section
27 from the person hired. A person may not require a person who has
28 provided a stamped certificate to have worker's compensation
29 coverage. The worker's compensation insurance carrier of a person who
30 contracts with an independent contractor shall accept a stamped
31 certificate in the same manner as a certificate of insurance.

32 (i) A stamped certificate filed under this section is binding on and
33 holds harmless from all claims:

34 (1) a person who contracts with an independent contractor after
35 receiving a copy of the stamped certificate; and

36 (2) the worker's compensation insurance carrier of the person who
37 contracts with the independent contractor.

38 The independent contractor may not collect compensation under
39 IC 22-3-2 through IC 22-3-6 for an injury from a person or the person's
40 worker's compensation carrier to whom the independent contractor has
41 furnished a stamped certificate.

42 SECTION 3. IC 22-3-6-1, AS AMENDED BY P.L.202-2001,



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SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the context otherwise requires:

(a) "Employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same, using the services of another for pay. A parent corporation and its subsidiaries shall each be considered joint employers of the corporation's, the parent's, or the subsidiaries' employees for purposes of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of employees shall each be considered joint employers of the employees provided by the lessor to the lessee for purposes of IC 22-3-2-6 and IC 22-3-3-31. If the employer is insured, the term includes the employer's insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer. The term also includes an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in IC 22-3-2-2.5.

(b) "Employee" means every person, including a minor, in the service of another, under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer.

(1) An executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation, other than a municipal corporation or governmental subdivision, ~~or~~ a charitable, religious, educational, or other nonprofit corporation, **or a corporation with less than three (3) executive officers**, is an employee of the corporation under IC 22-3-2 through IC 22-3-6.

(2) An executive officer of a municipal corporation or other governmental subdivision, ~~or of~~ a charitable, religious, educational, or other nonprofit corporation, **or a corporation with less than three (3) executive officers**, may, notwithstanding any other provision of IC 22-3-2 through IC 22-3-6, be brought within the coverage of its insurance contract by the corporation by specifically including the executive officer in the contract of insurance. The election to bring the executive officer within the coverage shall continue for the period the contract of insurance is

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in effect, and during this period, the executive officers thus brought within the coverage of the insurance contract are employees of the corporation under IC 22-3-2 through IC 22-3-6.

(3) Any reference to an employee who has been injured, when the employee is dead, also includes the employee's legal representatives, dependents, and other persons to whom compensation may be payable.

(4) An owner of a sole proprietorship may elect to include the owner as an employee under IC 22-3-2 through IC 22-3-6 if the owner is actually engaged in the proprietorship business. If the owner makes this election, the owner must serve upon the owner's insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. ~~If the owner of a sole proprietorship is an independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain an affidavit of exemption under IC 22-3-2-14.5.~~

(5) A partner in a partnership may elect to include the partner as an employee under IC 22-3-2 through IC 22-3-6 if the partner is actually engaged in the partnership business. If a partner makes this election, the partner must serve upon the partner's insurance carrier and upon the board written notice of the election. No partner may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. ~~If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under IC 22-3-2-14.5.~~

(6) Real estate professionals are not employees under IC 22-3-2 through IC 22-3-6 if:

- (A) they are licensed real estate agents;
- (B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and
- (C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(7) A person is an independent contractor ~~in the construction trades~~ and not an employee under IC 22-3-2 through IC 22-3-6 if the person is an independent contractor:

- (A) under the guidelines of the United States Internal Revenue Service; or

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(B) under a definition adopted in the manner prescribed by IC 4-22-2 by the worker's compensation board, with the assistance of the worker's compensation rating bureau and the department of insurance.

(8) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor carrier is not an employee of the motor carrier for purposes of IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(9) A member or manager in a limited liability company may elect to include the member or manager as an employee under IC 22-3-2 through IC 22-3-6 if the member or manager is actually engaged in the limited liability company business. If a member or manager makes this election, the member or manager must serve upon the member's or manager's insurance carrier and upon the board written notice of the election. A member or manager may not be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received.

(10) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth in IC 22-3-2-2.5.

(c) "Minor" means an individual who has not reached seventeen (17) years of age.

(1) Unless otherwise provided in this subsection, a minor employee shall be considered as being of full age for all purposes of IC 22-3-2 through IC 22-3-6.

(2) If the employee is a minor who, at the time of the accident, is employed, required, suffered, or permitted to work in violation of IC 20-8.1-4-25, the amount of compensation and death benefits, as provided in IC 22-3-2 through IC 22-3-6, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the injury or death of the minor, and the employer shall be liable for the other one-half (1/2) of the compensation or benefits. If the

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employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age and who at the time of the accident is employed, suffered, or permitted to work at any occupation which is not prohibited by law, this subdivision does not apply.

(3) A minor employee who, at the time of the accident, is a student performing services for an employer as part of an approved program under IC 20-10.1-6-7 shall be considered a full-time employee for the purpose of computing compensation for permanent impairment under IC 22-3-3-10. The average weekly wages for such a student shall be calculated as provided in subsection (d)(4).

(4) The rights and remedies granted in this subsection to a minor under IC 22-3-2 through IC 22-3-6 on account of personal injury or death by accident shall exclude all rights and remedies of the minor, the minor's parents, or the minor's personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of the injury or death. This subsection does not apply to minors who have reached seventeen (17) years of age.

(d) "Average weekly wages" means the earnings of the injured employee in the employment in which the employee was working at the time of the injury during the period of fifty-two (52) weeks immediately preceding the date of injury, divided by fifty-two (52), except as follows:

(1) If the injured employee lost seven (7) or more calendar days during this period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts thereof remaining after the time lost has been deducted.

(2) Where the employment prior to the injury extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, if results just and fair to both parties will be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of the employee's employer or of the casual nature or terms of the employment it is impracticable to compute the average weekly wages, as defined in this subsection, regard shall be had to the average weekly amount which during the fifty-two (52) weeks previous to the injury was being earned by a person in the same grade employed at the same work by the same employer or, if there is no person so

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employed, by a person in the same grade employed in the same class of employment in the same district.

(3) Wherever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of his earnings.

(4) In computing the average weekly wages to be used in calculating an award for permanent impairment under IC 22-3-3-10 for a student employee in an approved training program under IC 20-10.1-6-7, the following formula shall be used. Calculate the product of:

(A) the student employee's hourly wage rate; multiplied by

(B) forty (40) hours.

The result obtained is the amount of the average weekly wages for the student employee.

(e) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of the employment and do not include a disease in any form except as it results from the injury.

(f) "Billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(g) "Billing review standard" means the data used by a billing review service to determine pecuniary liability.

(h) "Community" means a geographic service area based on zip code districts defined by the United States Postal Service according to the following groupings:

(1) The geographic service area served by zip codes with the first three (3) digits 463 and 464.

(2) The geographic service area served by zip codes with the first three (3) digits 465 and 466.

(3) The geographic service area served by zip codes with the first three (3) digits 467 and 468.

(4) The geographic service area served by zip codes with the first three (3) digits 469 and 479.

(5) The geographic service area served by zip codes with the first three (3) digits 460, 461 (except 46107), and 473.

(6) The geographic service area served by the 46107 zip code and zip codes with the first three (3) digits 462.

(7) The geographic service area served by zip codes with the first three (3) digits 470, 471, 472, 474, and 478.

(8) The geographic service area served by zip codes with the first

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three (3) digits 475, 476, and 477.

(i) "Medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under IC 22-3-2 through IC 22-3-6.

(j) "Pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

SECTION 4. IC 22-3-6-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 4. An insurance company writing worker's compensation insurance coverage in Indiana shall use the definition of independent contractor set forth in section 1(b)(7) of this chapter to determine, for rating purposes, whether an employer/employee relationship exists.**

SECTION 5. IC 22-3-7-9, AS AMENDED BY P.L.202-2001, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) As used in this chapter, "employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same, using the services of another for pay. A parent corporation and its subsidiaries shall each be considered joint employers of the corporation's, the parent's, or the subsidiaries' employees for purposes of sections 6 and 33 of this chapter. Both a lessor and a lessee of employees shall each be considered joint employers of the employees provided by the lessor to the lessee for purposes of sections 6 and 33 of this chapter. The term also includes an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth under section 2.5 of this chapter. If the employer is insured, the term includes ~~his~~ **the employer's** insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer.

(b) As used in this chapter, "employee" means every person, including a minor, in the service of another, under any contract of hire or apprenticeship written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer. For purposes of this chapter

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the following apply:

(1) Any reference to an employee who has suffered disablement, when the employee is dead, also includes ~~his~~ **the employee's** legal representative, dependents, and other persons to whom compensation may be payable.

(2) An owner of a sole proprietorship may elect to include himself **or herself** as an employee under this chapter if ~~he~~ **the owner** is actually engaged in the proprietorship business. If the owner makes this election, ~~he~~ **the owner** must serve upon ~~his~~ **the owner's** insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under this chapter unless the notice has been received. ~~If the owner of a sole proprietorship is an independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain an affidavit of exemption under section 34.5 of this chapter.~~

(3) A partner in a partnership may elect to include himself **or herself** as an employee under this chapter if ~~he~~ **the partner** is actually engaged in the partnership business. If a partner makes this election, ~~he~~ **the partner** must serve upon ~~his~~ **the partner's** insurance carrier and upon the board written notice of the election. No partner may be considered an employee under this chapter until the notice has been received. ~~If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under section 34.5 of this chapter.~~

(4) Real estate professionals are not employees under this chapter if:

(A) they are licensed real estate agents;

(B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and

(C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(5) A person is an independent contractor ~~in the construction trades~~ and not an employee under this chapter if the person is an independent contractor:

(A) under the guidelines of the United States Internal Revenue Service; **or**

(B) under a definition adopted in the manner prescribed by IC 4-22-2 by the worker's compensation board, with the

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**assistance of the worker's compensation rating bureau and
the department of insurance.**

(6) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor carrier is not an employee of the motor carrier for purposes of this chapter. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(7) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth under section 2.5 of this chapter.

(c) As used in this chapter, "minor" means an individual who has not reached seventeen (17) years of age. A minor employee shall be considered as being of full age for all purposes of this chapter. However, if the employee is a minor who, at the time of the last exposure, is employed, required, suffered, or permitted to work in violation of the child labor laws of this state, the amount of compensation and death benefits, as provided in this chapter, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the disability or death of the minor, and the employer shall be wholly liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age, and who at the time of the last exposure is employed, suffered, or permitted to work at any occupation which is not prohibited by law, the provisions of this subsection prescribing double the amount otherwise recoverable do not apply. The rights and remedies granted to a minor under this chapter on account of disease shall exclude all rights and remedies of the minor, **his the minor's** parents, **his the minor's** personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of any disease.

(d) This chapter does not apply to casual laborers as defined in subsection (b), nor to farm or agricultural employees, nor to household employees, nor to railroad employees engaged in train service as

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1 engineers, firemen, conductors, brakemen, flagmen, baggagemen, or
 2 foremen in charge of yard engines and helpers assigned thereto, nor to
 3 their employers with respect to these employees. Also, this chapter
 4 does not apply to employees or their employers with respect to
 5 employments in which the laws of the United States provide for
 6 compensation or liability for injury to the health, disability, or death by
 7 reason of diseases suffered by these employees.

8 (e) As used in this chapter, "disablement" means the event of
 9 becoming disabled from earning full wages at the work in which the
 10 employee was engaged when last exposed to the hazards of the
 11 occupational disease by the employer from whom ~~he~~ **the employee**
 12 claims compensation or equal wages in other suitable employment, and
 13 "disability" means the state of being so incapacitated.

14 (f) For the purposes of this chapter, no compensation shall be
 15 payable for or on account of any occupational diseases unless
 16 disablement, as defined in subsection (e), occurs within two (2) years
 17 after the last day of the last exposure to the hazards of the disease
 18 except for the following:

19 (1) In all cases of occupational diseases caused by the inhalation
 20 of silica dust or coal dust, no compensation shall be payable
 21 unless disablement, as defined in subsection (e), occurs within
 22 three (3) years after the last day of the last exposure to the hazards
 23 of the disease.

24 (2) In all cases of occupational disease caused by the exposure to
 25 radiation, no compensation shall be payable unless disablement,
 26 as defined in subsection (e), occurs within two (2) years from the
 27 date on which the employee had knowledge of the nature of ~~his~~
 28 **the employee's** occupational disease or, by exercise of reasonable
 29 diligence, should have known of the existence of such disease and
 30 its causal relationship to ~~his~~ **the employee's** employment.

31 (3) In all cases of occupational diseases caused by the inhalation
 32 of asbestos dust, no compensation shall be payable unless
 33 disablement, as defined in subsection (e), occurs within three (3)
 34 years after the last day of the last exposure to the hazards of the
 35 disease if the last day of the last exposure was before July 1, 1985.

36 (4) In all cases of occupational disease caused by the inhalation
 37 of asbestos dust in which the last date of the last exposure occurs
 38 on or after July 1, 1985, and before July 1, 1988, no compensation
 39 shall be payable unless disablement, as defined in subsection (e),
 40 occurs within twenty (20) years after the last day of the last
 41 exposure.

42 (5) In all cases of occupational disease caused by the inhalation

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1 of asbestos dust in which the last date of the last exposure occurs
 2 on or after July 1, 1988, no compensation shall be payable unless
 3 disablement (as defined in subsection (e)) occurs within
 4 thirty-five (35) years after the last day of the last exposure.

5 (g) For the purposes of this chapter, no compensation shall be
 6 payable for or on account of death resulting from any occupational
 7 disease unless death occurs within two (2) years after the date of
 8 disablement. However, this subsection does not bar compensation for
 9 death:

10 (1) where death occurs during the pendency of a claim filed by an
 11 employee within two (2) years after the date of disablement and
 12 which claim has not resulted in a decision or has resulted in a
 13 decision which is in process of review or appeal; or

14 (2) where, by agreement filed or decision rendered, a
 15 compensable period of disability has been fixed and death occurs
 16 within two (2) years after the end of such fixed period, but in no
 17 event later than three hundred (300) weeks after the date of
 18 disablement.

19 (h) As used in this chapter, "billing review service" refers to a
 20 person or an entity that reviews a medical service provider's bills or
 21 statements for the purpose of determining pecuniary liability. The term
 22 includes an employer's worker's compensation insurance carrier if the
 23 insurance carrier performs such a review.

24 (i) As used in this chapter, "billing review standard" means the data
 25 used by a billing review service to determine pecuniary liability.

26 (j) As used in this chapter, "community" means a geographic service
 27 area based on zip code districts defined by the United States Postal
 28 Service according to the following groupings:

29 (1) The geographic service area served by zip codes with the first
 30 three (3) digits 463 and 464.

31 (2) The geographic service area served by zip codes with the first
 32 three (3) digits 465 and 466.

33 (3) The geographic service area served by zip codes with the first
 34 three (3) digits 467 and 468.

35 (4) The geographic service area served by zip codes with the first
 36 three (3) digits 469 and 479.

37 (5) The geographic service area served by zip codes with the first
 38 three (3) digits 460, 461 (except 46107), and 473.

39 (6) The geographic service area served by the 46107 zip code and
 40 zip codes with the first three (3) digits 462.

41 (7) The geographic service area served by zip codes with the first
 42 three (3) digits 470, 471, 472, 474, and 478.

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(8) The geographic service area served by zip codes with the first three (3) digits 475, 476, and 477.

(k) As used in this chapter, "medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under this chapter.

(l) As used in this chapter, "pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under this chapter in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

SECTION 6. IC 22-3-7-34, AS AMENDED BY P.L.202-2001, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 34. (a) As used in this section, "person" does not include an owner who contracts for performance of work on the owner's owner occupied residential property.

(b) Every employer bound by the compensation provisions of this chapter, except the state, counties, townships, cities, towns, school cities, school towns, school townships, other municipal corporations, state institutions, state boards, and state commissions, shall insure the payment of compensation to the employer's employees and their dependents in the manner provided in this chapter, or procure from the worker's compensation board a certificate authorizing the employer to carry such risk without insurance. While that insurance or certificate remains in force, the employer, or those conducting the employer's business, and the employer's occupational disease insurance carrier shall be liable to any employee and the employee's dependents for disablement or death from occupational disease arising out of and in the course of employment only to the extent and in the manner specified in this chapter.

(c) Every employer who, by election, is bound by the compensation provisions of this chapter, except those exempted from the provisions by subsection (b), shall:

(1) insure and keep insured the employer's liability under this chapter in some corporation, association, or organization authorized to transact the business of worker's compensation insurance in this state; or

(2) furnish to the worker's compensation board satisfactory proof of the employer's financial ability to pay the compensation in the amount and manner and when due as provided for in this chapter.

In the latter case the board may require the deposit of an acceptable

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1 security, indemnity, or bond to secure the payment of compensation
2 liabilities as they are incurred.

3 (d) Every employer required to carry insurance under this section
4 shall file with the worker's compensation board in the form prescribed
5 by it, within ten (10) days after the termination of the employer's
6 insurance by expiration or cancellation, evidence of the employer's
7 compliance with subsection (c) and other provisions relating to the
8 insurance under this chapter. The venue of all criminal actions under
9 this section lies in the county in which the employee was last exposed
10 to the occupational disease causing disablement. The prosecuting
11 attorney of the county shall prosecute all violations upon written
12 request of the board. The violations shall be prosecuted in the name of
13 the state.

14 (e) Whenever an employer has complied with subsection (c) relating
15 to self-insurance, the worker's compensation board shall issue to the
16 employer a certificate which shall remain in force for a period fixed by
17 the board, but the board may, upon at least thirty (30) days notice, and
18 a hearing to the employer, revoke the certificate, upon presentation of
19 satisfactory evidence for the revocation. After the revocation, the board
20 may grant a new certificate to the employer upon the employer's
21 petition, and satisfactory proof of the employer's financial ability.

22 (f)(1) Subject to the approval of the worker's compensation board,
23 any employer may enter into or continue any agreement with the
24 employer's employees to provide a system of compensation, benefit, or
25 insurance in lieu of the compensation and insurance provided by this
26 chapter. A substitute system may not be approved unless it confers
27 benefits upon employees and their dependents at least equivalent to the
28 benefits provided by this chapter. It may not be approved if it requires
29 contributions from the employees unless it confers benefits in addition
30 to those provided under this chapter, which are at least commensurate
31 with such contributions.

32 (f)(2) The substitute system may be terminated by the worker's
33 compensation board on reasonable notice and hearing to the interested
34 parties, if it appears that the same is not fairly administered or if its
35 operation shall disclose latent defects threatening its solvency, or if for
36 any substantial reason it fails to accomplish the purpose of this chapter.
37 On termination, the board shall determine the proper distribution of all
38 remaining assets, if any, subject to the right of any party in interest to
39 take an appeal to the court of appeals.

40 (g)(1) No insurer shall enter into or issue any policy of insurance
41 under this chapter until its policy form has been submitted to and
42 approved by the worker's compensation board. The board shall not

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1 approve the policy form of any insurance company until the company
 2 shall file with it the certificate of the insurance commissioner showing
 3 that the company is authorized to transact the business of worker's
 4 compensation insurance in Indiana. The filing of a policy form by any
 5 insurance company or reciprocal insurance association with the board
 6 for approval constitutes on the part of the company or association a
 7 conclusive and unqualified acceptance of each of the compensation
 8 provisions of this chapter, and an agreement by it to be bound by the
 9 compensation provisions of this chapter.

10 (g)(2) All policies of insurance companies and of reciprocal
 11 insurance associations, insuring the payment of compensation under
 12 this chapter, shall be conclusively presumed to cover all the employees
 13 and the entire compensation liability of the insured under this chapter
 14 in all cases in which the last day of the exposure rendering the
 15 employer liable is within the effective period of such policy.

16 (g)(3) Any provision in any such policy attempting to limit or
 17 modify the liability of the company or association insuring the same
 18 shall be wholly void.

19 (g)(4) Every policy of any company or association shall be deemed
 20 to include the following provisions:

21 "(A) The insurer assumes in full all the obligations to pay
 22 physician's fees, nurse's charges, hospital supplies, burial
 23 expenses, compensation or death benefits imposed upon or
 24 accepted by the insured under this chapter.

25 (B) This policy is subject to the provisions of this chapter relative
 26 to the liability of the insured to pay physician's fees, nurse's
 27 charges, hospital services, hospital supplies, burial expenses,
 28 compensation or death benefits to and for such employees, the
 29 acceptance of such liability by the insured, the adjustment, trial
 30 and adjudication of claims for such physician's fees, nurse's
 31 charges, hospital services, hospital supplies, burial expenses,
 32 compensation, or death benefits.

33 (C) Between this insurer and the employee, notice to or
 34 knowledge of the occurrence of the disablement on the part of the
 35 insured (the employer) shall be notice or knowledge thereof, on
 36 the part of the insurer. The jurisdiction of the insured (the
 37 employer) for the purpose of this chapter is the jurisdiction of this
 38 insurer, and this insurer shall in all things be bound by and shall
 39 be subject to the awards, judgments and decrees rendered against
 40 the insured (the employer) under this chapter.

41 (D) This insurer will promptly pay to the person entitled to the
 42 same all benefits conferred by this chapter, including all

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1 physician's fees, nurse's charges, hospital services, hospital
 2 supplies, burial expenses, and all installments of compensation or
 3 death benefits that may be awarded or agreed upon under this
 4 chapter. The obligation of this insurer shall not be affected by any
 5 default of the insured (the employer) after disablement or by any
 6 default in giving of any notice required by this policy, or
 7 otherwise. This policy is a direct promise by this insurer to the
 8 person entitled to physician's fees, nurse's charges, fees for
 9 hospital services, charges for hospital services, charges for
 10 hospital supplies, charges for burial, compensation, or death
 11 benefits, and shall be enforceable in the name of the person.

12 (E) Any termination of this policy by cancellation shall not be
 13 effective as to employees of the insured covered hereby unless at
 14 least thirty (30) days prior to the taking effect of such
 15 cancellation, a written notice giving the date upon which such
 16 termination is to become effective has been received by the
 17 worker's compensation board of Indiana at its office in
 18 Indianapolis, Indiana.

19 (F) This policy shall automatically expire one (1) year from the
 20 effective date of the policy, unless the policy covers a period of
 21 three (3) years, in which event, it shall automatically expire three
 22 (3) years from the effective date of the policy. The termination
 23 either of a one (1) year or a three (3) year policy, is effective as to
 24 the employees of the insured covered by the policy."

25 (g)(5) All claims for compensation, nurse's charges, hospital
 26 services, hospital supplies, physician's fees, or burial expenses may be
 27 made directly against either the employer or the insurer or both, and the
 28 award of the worker's compensation board may be made against either
 29 the employer or the insurer or both.

30 (g)(6) If any insurer shall fail to pay any final award or judgment
 31 (except during the pendency of an appeal) rendered against it, or its
 32 insured, or, if it shall fail to comply with this chapter, the worker's
 33 compensation board shall revoke the approval of its policy forms, and
 34 shall not accept any further proofs of insurance from it until it shall
 35 have paid the award or judgment or complied with this chapter, and
 36 shall have resubmitted its policy form and received the approval of the
 37 policy by the industrial board.

38 (h) No policy of insurance covering the liability of an employer for
 39 worker's compensation shall be construed to cover the liability of the
 40 employer under this chapter for any occupational disease unless the
 41 liability is expressly accepted by the insurance carrier issuing the policy
 42 and is endorsed in that policy. The insurance or security in force to

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cover compensation liability under this chapter shall be separate from the insurance or security under IC 22-3-2 through IC 22-3-6. Any insurance contract covering liability under either part of this article need not cover any liability under the other.

(i) For the purpose of complying with subsection (c), groups of employers are authorized to form mutual insurance associations or reciprocal or interinsurance exchanges subject to any reasonable conditions and restrictions fixed by the department of insurance. This subsection does not apply to mutual insurance associations and reciprocal or interinsurance exchanges formed and operating on or before January 1, 1991, which shall continue to operate subject to the provisions of this chapter and to such reasonable conditions and restrictions as may be fixed by the worker's compensation board.

(j) Membership in a mutual insurance association or a reciprocal or interinsurance exchange so proved, together with evidence of the payment of premiums due, is evidence of compliance with subsection (c).

(k) Any person bound under the compensation provisions of this chapter, contracting for the performance of any work exceeding one thousand dollars (\$1,000) in value, in which the hazard of an occupational disease exists, by a contractor subject to the compensation provisions of this chapter without exacting from the contractor a certificate from the worker's compensation board showing that the contractor has complied with subsections (b), (c), and (d), shall be liable to the same extent as the contractor for compensation, physician's fees, hospital fees, nurse's charges, and burial expenses on account of the injury or death of any employee of such contractor, due to occupational disease arising out of and in the course of the performance of the work covered by such contract.

(l) Any contractor who sublets any contract for the performance of any work to a subcontractor subject to the compensation provisions of this chapter, without obtaining a certificate from the worker's compensation board showing that the subcontractor has complied with subsections (b), (c), and (d), is liable to the same extent as the subcontractor for the payment of compensation, physician's fees, hospital fees, nurse's charges, and burial expense on account of the injury or death of any employee of the subcontractor due to occupational disease arising out of and in the course of the performance of the work covered by the subcontract.

(m) **(k)** A person paying compensation, physician's fees, hospital fees, nurse's charges, or burial expenses under subsection (k) or (l), **this article** may recover the amount paid or to be paid from any person who

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would otherwise have been liable for the payment thereof and may, in addition, recover the litigation expenses and attorney's fees incurred in the action before the worker's compensation board as well as the litigation expenses and attorney's fees incurred in an action to collect the compensation, medical expenses, and burial expenses.

~~(n)~~ **(l)** Every claim filed with the worker's compensation board under this section shall be instituted against all parties liable for payment. ~~The worker's compensation board, in an award under subsection (k), shall fix the order in which such parties shall be exhausted, beginning with the immediate employer and, in an award under subsection (l), shall determine whether the subcontractor has the financial ability to pay the compensation and medical expenses when due and, if not, shall order the contractor to pay the compensation and medical expenses.~~

(m) An insurance company writing occupational disease coverage in Indiana shall use the definition of independent contractor set forth in section 9(b)(5) of this chapter to determine, for rating purposes, whether an employer/employee relationship exists.

SECTION 7. IC 22-3-7-34.5, AS AMENDED BY P.L.202-2001, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 34.5. (a) As used in this section, "independent contractor" refers to a person described in section 9(b)(5) of this chapter.

(b) As used in this section, "person" means an individual; a proprietorship; a partnership; a joint venture; a firm; an association; a corporation; or other legal entity.

~~(c)~~ **(b)** An independent contractor who does not make an election under section 9(b)(2) of this chapter or section 9(b)(3) of this chapter is not subject to the compensation provisions of this chapter. ~~and must file a statement with the department of state revenue and obtain a certificate of exemption.~~

(d) An independent contractor shall file with the department of state revenue, in the form prescribed by the department of state revenue, a statement containing the information required by IC 6-3-7-5.

(e) Together with the statement required in subsection (d), an independent contractor shall file annually with the department documentation in support of independent contractor status before being granted a certificate of exemption. The independent contractor must obtain clearance from the department of state revenue before issuance of the certificate.

(f) An independent contractor shall pay a filing fee in the amount of fifteen dollars (\$15) with the certificate filed under subsection (h). The

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fees collected under this subsection shall be deposited in the worker's compensation supplemental administrative fund and shall be used for all expenses the board incurs:

(g) The worker's compensation board shall maintain a data base consisting of certificates received under this section and on request may verify that a certificate was filed:

(h) A certificate of exemption must be filed with the worker's compensation board. The board shall indicate that the certificate has been filed by stamping the certificate with the date of receipt and returning a stamped copy to the person filing the certificate. A certificate becomes effective as of midnight seven (7) business days after the date file stamped by the worker's compensation board. The board shall maintain a data base containing information required in subsections (e) and (g):

(i) A person who contracts for services of another person not covered by this chapter to perform work must secure a copy of a stamped certificate of exemption filed under this section from the person hired. A person may not require a person who has provided a stamped certificate to have worker's compensation coverage. The worker's compensation insurance carrier of a person who contracts with an independent contractor shall accept a stamped certificate in the same manner as a certificate of insurance:

(j) A stamped certificate filed under this section is binding on and holds harmless for all claims:

(1) a person who contracts with an independent contractor after receiving a copy of the stamped certificate; and

(2) the worker's compensation insurance carrier of the person who contracts with the independent contractor.

The independent contractor may not collect compensation under this chapter for an injury from a person or the person's worker's compensation carrier to whom the independent contractor has furnished a stamped certificate.

SECTION 8. IC 6-3-7-5 IS REPEALED [EFFECTIVE JULY 1, 2003].

SECTION 9. [EFFECTIVE UPON PASSAGE] (a) The worker's compensation board, with the assistance of the worker's compensation rating bureau and the department of insurance, shall adopt a definition of the term "independent contractor" under IC 22-3-6-1(b)(7) and IC 22-3-7-9(b)(5), as amended by this act, before December 31, 2004.

(b) This SECTION expires January 1, 2005.

SECTION 10. An emergency is declared for this act.



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